



Department of Justice

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AT
(202) 616-2771
TDD (202) 514-1888

JUSTICE DEPARTMENT URGES KENTUCKY BAR TO ALLOW NON-LAWYERS TO PARTICIPATE IN REAL ESTATE CLOSINGS

Bar Opinion Would Likely Raise Prices, End Consumer Choice

WASHINGTON, D.C. -- The Justice Department today issued a letter urging the Kentucky Bar Association Board of Governors to reject a proposed opinion that would prevent non-lawyers from competing with lawyers to perform real estate closings in the state.

The Department's Antitrust Division said that the opinion would likely raise real estate closing costs and give consumers fewer choices.

"Kentuckians are likely to see their real estate closing costs increase without competition for these services," said Joel I. Klein, Assistant Attorney General in charge of the Department's Antitrust Division. "Consumers should be able to choose the service that's best for them. We should not adopt a rule that would make it more costly and difficult to buy a home."

The proposed opinion would require consumers to use a lawyer for settlement when they buy and sell property, when they refinance their mortgages, or when they get a home equity loan.

The Kentucky Bar Association's Board of Governors will consider the proposed opinion at its Friday, September 12 meeting. The opinion, proposed by the Kentucky Bar Association's Unauthorized Practice Committee, must be approved by the Board of Governors and Kentucky Supreme Court to be binding.

Currently, Kentuckians can use a non-lawyer settlement service, such as a bank, title company, or realtor. Many banks provide closings services for refinancings and home equity loans at no additional cost.

Klein said that the opinion would raise prices in two ways. "First, it would force Kentuckians who would prefer not to pay for a lawyer at closing to do so. Second, without competition from non-lawyers, the fees lawyers charge are likely to go up--resulting in higher prices, even for those consumers who would use a lawyer anyhow," said Klein.

The Kentucky proposal would overturn a 1981 state opinion which held that non-lawyers could provide settlement services. Since this opinion was issued, non-lawyer services have increasingly offered closing services in northern Kentucky, Louisville, Lexington, and other parts of the state.

Consumers may be less likely to have legal questions at closing today than in the past because increasingly standardized forms are used for mortgages, the Department said. Also, legal questions are particularly less likely to arise when home equity loans and refinancings are involved, because the homeowner has already gone through the closing process for the property once before.

The proposed opinion would not guarantee that a lawyer will actually be at the closing. Lawyers would be allowed to delegate closing duties to their lay employees. Lay closing personnel not in the employ of lawyers could not, however, perform closings.

Many consumers may of course want to hire their own attorney to provide legal advice, negotiate disputes, or offer other protections. But the issue posed by the Bar opinion is whether non-attorney closing services should be eliminated as an alternative for those who wish to use them.

Consumers in much of the country can choose between lawyers and non-lawyer services, the Department said.

In September 1996, the Department issued a similar letter to the Virginia State Bar. Since 1996, both Virginia and New Jersey have considered and rejected bans on non-lawyer closing services.

Uninformed consumers can be protected by measures far less anticompetitive than an outright ban on non-lawyer closings, the Justice Department wrote. For example, the New Jersey court required written notice of the risks involved in closing without an attorney.

In the early 1980s, private bar associations tried to stop competition from non-lawyers in real estate closings and trust and estate services through amendments to local bar association rules. The Justice Department sued these associations for violating the antitrust laws and obtained court orders prohibiting the illegal conduct.

Certain official state actions, even if anticompetitive, ordinarily do not violate the antitrust laws. As a result, approval by the Kentucky Supreme Court would likely protect the rule proposed here from a later suit by federal antitrust agencies. This is one reason why the Justice Department chose to express its concerns through the attached letter.

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